

in the name of
DEVELOPMENT

*An Independent Enquiry into the
Proposed Maroli-Umbergaon Port Project (Gujarat)*

Tribunal Headed By:
Justice S. M. Daud
(Retd. Judge, Bombay High Court)

**THE INDIAN PEOPLE'S TRIBUNAL
ON ENVIRONMENT AND HUMAN RIGHTS**

April 2000

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*To the memory of Lt. Col. Pratap Save,
who was brutally beaten by the police for leading the people of Umbergaon
in a peaceful struggle against the proposed Maroli-Umbergaon Port Project, (Gujarat)
and who succumbed to his injuries in Mumbai on 20 April 2000.*

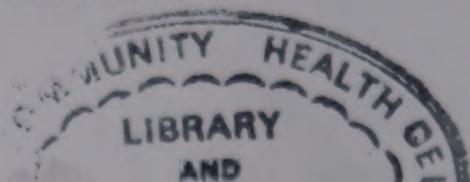
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Members of The Tribunal

Justice S.M. Daud is a retired judge of the Bombay High Court. He was born in 1931 and completed his schooling from Bishop Cotton School, Nagpur. In September 1954, after graduating with an M.A. in Political Science and obtaining an L.L.B. degree from Nagpur, he joined the sub-judicial service. He was appointed Judge of the Bombay High Court in July 1985, a position he continued to hold with honour until his retirement in December 1992.

Raajen Singh is an activist and researcher based in Mumbai. He has worked for several years on the rights of adivasi and other marginalised people to their lands, forests, water and environment. He is presently associated with the Human Rights Law Network and the Indian National Social Action Forum (INSAF). He is the author of '*Many People, One Struggle: Indigenous Peoples of Asia.*'

Acknowledgements

The IPT gratefully acknowledges Mr Bittu Sahgal, environmentalist, and Mr Nityanand Jayaraman, activist with Greenpeace, for their assistance in the investigation.

The IPT further thanks Amarjit Singh, Sherin Fernandes, Sindhu Sankaran and Shekhar Krishnan for their help with the report.

Co-ordinator - Preeti Verma

STOP PRESS

At the time of going to the press the Tribunal was informed of a grave act of state repression upon the locals of Umbergaon.

On 7 April 2000 the State Reserve Police was brought into Umbergaon to assist the consortium of NATELCO and UNOCAL Corporation to conduct the survey for the proposed port. The peaceful protest of the locals was responded to by a lathi-charge, tear gas shells and indiscriminate arrests. 48 persons including 18 women were arrested and locked-up in the Umbergaon police station and 6 of the men were brutally beaten in the presence of Hasmukh Patel, the District Superintendent of Police and Narendra Amin, the Deputy Superintendent of Police, Bulsar District. False cases were filed against those arrested. They were ultimately released on bail by the Magistrate's Court at Pardi on 8 April 2000 only to be once again detained under Section 107 of Criminal Procedure Code for another 24 hours at Umbergaon Police Station.

We are informed that Lt. Colonel Pratap Save was picked up from his residence at Dehri at 1.00 a.m. on 8 April 2000 and was ruthlessly beaten by Dy.SP Narendra Amin (a certified doctor) at the Umbergaon Police Station soon thereafter. The beating of Lt. Colonel Pratap Save was in the presence of other arrested activists. Due to the injuries sustained during the beating Lt. Colonel Pratap Save suffered brain haemorrhage and fell into a coma. The police shifted him to Jan Seva Hospital at Vapi knowing fully well that the Hospital would be unable to give him the required treatment. His family then rushed him to Hinduja Hospital, Bombay where he underwent an emergency operation on 9 April 2000 and was operated upon again on 12 April 2000. Lt. Colonel Pratap Save passed away on 20 April 2000.

Lt. Colonel Pratap Save was the President of Kinara Bachao Sangharsh Samiti and was deliberately singled out by the police to crush the growing agitation and terrorise the protesting locals. It was only on 28 March 2000 that Lt. Colonel Pratap Save along with other local residents met with the Chief Minister of Gujarat, Mr. Keshubhai Patel who had invited them for a discussion to ascertain their reasons for opposing the proposed port. The Samiti informed the Chief Minister that they will not accept the port project.

The Tribunal condemns the above action of the police on locals who are agitating for their right to survival and to protect their only means of livelihood. This is another example of repression by the state to drown the legitimate voice of protest. The concerned policemen have acted beyond their official capacity and should face criminal prosecution at the hands of the state for murder. The Tribunal recommends that the investigation be conducted by a retired judicial officer at least of the rank of a Sessions Judge assisted by a high ranking police officer, both from Mumbai in order to ensure that it is fair and unbiased. We apprehend that the investigation if left to Gujarat State may not bring out the truth.

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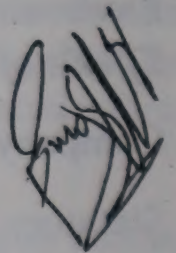
PREFACE

The Tribunal regrets the delay in the submission of this report. This can be attributed to the vast records and abundant material on the subject that had to be perused, as also the other material available on the subject. We are of course grateful to the persons who testified before us and intervened either with their queries or observations in the course of their interventions.

Our hosts — the Indian People's Tribunal on Environment and Human Rights (IPT) and the Kinara Bachao Sangharsh Samiti (KBSS) — have taken immense pains to organise the visit and sittings of the Tribunal at different locations in the potentially affected area and its vicinity. Listening to the simple fisherfolk has been an experience for us, in that greater wisdom is to be found in those performing daily chores rather in scholarly or technical articles meant for specialists.

The manner in which these simple folk stated their cases has left a deep impression on our minds. It will be a tragedy if their sentiments are ignored and the Gujarat Government and its agencies and foreign collaborators proceed with the project without heeding these voices.

We would like to thank Advocate Maharukh Adenwala, and Ms Preeti Verma of the IPT Secretariat. We should not forget to extend our thanks to the officers of the Gujarat Maritime Board and NATELCO for taking the trouble to appear before us and give us such information as was available with them. This is the first time that the Government and the successful bidders of a so-called development project have cared to appear before an unofficial body. We hope that this precedent will be followed by similar organisations in the future. Contrary to the characterisations of the advocates of privatisation and globalisation, a non-governmental organisation is not necessarily an enemy of progress or development.



Justice S.M. Daud
Retired Judge, Bombay High Court

PROCEDURE OF THE ENQUIRY

In early 1999, the inhabitants of the coastal areas of Maroli-Umbergaon (Umargaon/Umergaon) in South Gujarat learnt of the Gujarat Maritime Board's plan to set up a port in Umbergaon Taluka. This proposal was, however, not directly communicated to them by the Government. They came to know of the project only when the company to which the contract was awarded began conducting surveys for the proposed port in their locality. The inhabitants of Umbergaon are apprehensive of a large port being constructed in a coastal area on whose ecology and economy thousands of fisherfolk are dependent. The Kinara Bachao Sangharsh Samiti, an organisation active in the region, requested the Indian People's Tribunal on Environment and Human Rights (IPT) to investigate into the proposed Umbergaon Port Project, in view of its environmental and human consequences.

On 24 and 25 July 1999, the Tribunal conducted public hearings at Dehri, Padgam, Umbergaon, Nargol Bunder, Maroli, Phansa and Khatalvad. Residents from these towns and villages and their adjoining areas – not just fisherfolk, but industrialists, farmers, and others — came in large numbers to depose before the panel chaired by Justice S M Daud (Retd Judge, Bombay High Court) and Mr Raajen Singh.

Since representatives of the Gujarat Maritime Board (GMB) and National Telecom of India Limited (NATELCO), a constituent of the consortium for the proposed port, were unable to meet with Tribunal members during these public hearings, a separate meeting was organised in Mumbai on 13 August 1999 at the Bombay Natural History Society. Mr Bittu Sahgal and Mr Nityanand Jayaraman attended the sessions. Besides officials of GMB and NATELCO, a number of residents of Umbergaon Taluka were also present at the meeting.

Terms of Reference

The following terms of reference were decided upon by the IPT.

- a) Whether the Gujarat government has taken the locals into confidence and acted in a transparent manner in respect of the Maroli-Umbergaon port project.
- b) Whether the local residents of the area including the fishermen and agriculturists will be affected by the setting up of the proposed port project, and if so to what extent.
- c) Whether the environment will be affected by the setting-up of the proposed port project.
- d) Keeping in mind the proximity of Mumbai Port Trust, Jawaharlal Nehru Port Trust, Hazira, Dahej, etc., whether there is any need for the setting-up of the Maroli-Umbergaon port.
- e) Whether the Gujarat government has acted in accordance with law and obtained the necessary permissions from the concerned authorities including Ministry of Environment and Forests, Government of India, for the setting up of the Maroli-Umbergaon port.
- f) Whether the project is economically feasible.

GUJARAT PORTS



REFERENCES MAJOR PORTS INTERMEDIATE PORT NON-INTERMEDIATE MINOR PORTS
 SUGGESTED SITE FOR PORT DEVELOPMENT

*Source: White Paper On Development Of Ports Of Gujarat
 Department Of Ports And Fisheries, Government Of Gujarat*

"The 1,600 kilometre long coastline endows Gujarat with strategic port locations. Situated on the western coast of India, it has the potential to be a principal maritime State. Presently there are 41 ports, 11 of which are intermediate ports and 29 are minor ports under the control of Gujarat Maritime Board (GMB)." The above statement, from the New Port Policy 1995 of the Government of Gujarat, is in conformity with the overall policy for the country — the policy of liberalisation and privatisation through a process of globalisation. To facilitate this process the Ministry of Surface Transport has initiated measures to liberalise rules and procedures relating to maritime transport.

Having embarked on a massive plan of industrialisation, the Gujarat government has established industrial areas throughout the state. Valsad district alone has 10 such industrial estates. The single largest concentration of industry is in chemicals, followed by pulp and paper, and pharmaceuticals. Several hazardous and polluting chemicals are manufactured in these plants, leading to extensive environmental degradation. Sarigam Industrial Estate, against whom various complaints of pollution have been registered, is located in Umbergaon Taluka.

To further this process of industrialisation, the Gujarat Maritime Board (GMB) proposes to establish a port at Umbergaon taluka of Valsad district. The GMB was established in 1982 as the nodal authority for Gujarat and reports to the Department of Ports and Fisheries, Government of Gujarat.

Mr P N Roychowdhury, Vice Chairman and Chief Executive Officer of GMB has stated that the goals of GMB are two-fold: to accelerate the pace of development in Gujarat and to reduce the inevitable human suffering and environmental damage to the unavoidable minimum. GMB has awarded the development rights of the port on Build-Own-Operate-Transfer (BOOT) basis to a consortium comprising of NATELCO and UNOCAL Corporation, an American-owned oil and gas corporation.

Umbergaon taluka is adjacent to Maharashtra and is designated a scheduled area under the Fifth Schedule of the Constitution, and therefore it has certain privileges granted to Gram Panchayats and Gram Sabhas. The taluka has two minor ports at Umbergaon and Maroli. However, these ports only exist in name, as boats actually come onto the beach mainly at high tide. No ship with any significant draft can dock at these minor ports.

The majority of the taluka residents depend on fishing and agriculture for their livelihood and survival. This area is a breeding and spawning ground for fish. There are 29 fishing centres in Valsad district, and a total of 58,760 tonnes of fish was marketed from this area from 1994-95. The district is also well known for its mango, chickoo and guava orchards, and its teak plantations and rice paddies. Diverse communities such as Mangelas, Mithnas, Kamlis, Kolipadas, Koripattis, Harijans and others peacefully co-habit in this taluka.

The Indian Ports Act, 1908 and the Major Ports Act, 1963 are the major legislations concerned with the management and supervision of ports. These Acts envisage two types of ports, *major ports* and *minor ports*.

The Indian Ports Act defines a *major port* as any port which the Central Government may by notification in the official gazette declare, or may under any law for the time being in force have declared to be a major port. Port limits include piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for the safety of vessels, or for the improvement and maintenance of the port and its approaches, whether within or without the high water mark, and subject to any rights of private property therein, or any portion of the shore or bank within 50 yards of the high water mark.

The Acts indicate that a *major port* is under the supervision of the Central Government and all other ports are under the supervision of the respective State Governments. The Maritime States Development Council has been formed to ensure an integrated approach towards the development of major and minor ports.

There is no National Port Policy to regulate the construction and management of ports. The haphazard and unregulated development of ports along the coastline of India has resulted in the waste of national resources and the unnecessary diversion of traffic from one port to another. The Ninth Five-Year Plan (NFYP) recommends the establishment of a regulatory mechanism to take up important aspects of coastal zone management, environmental protection and navigational safety. The NFYP also states that before embarking on any major investment in coastal or port infrastructure, the development and modernisation of existing port facilities should receive top priority to improve overall efficiency and cargo-handling productivity. The NFYP further states that there should be integrated development of port facilities and infrastructure at major and minor ports in order to avoid duplication and overlapping of efforts, and to ensure optimal utilisation of national resources.

The Department of Ports and Fisheries, Government of Gujarat, in its 'White Paper on Development of Ports in Gujarat', has included a map which indicates the major port facilities already existing in the State. This map shows that numerous ports already exist in close proximity to each other. One might also note the proposal, pending before the Central Government, for the expansion of the Pipavav Port in Gujarat. The major ports account for 95% of the traffic handled by all ports throughout the country. The Rakesh Mohan Committee Report¹ has recommended that "major ports urgently need to upgrade their handling technology, modernise their equipment and management and raise adequate resources, both for the creation of additional port facilities and to improve existing ones".

¹ The Indian Infrastructure Report - Policy Imperatives for Growth and Welfare (also known as the Rakesh Mohan Committee) Report of the Expert Group on the Commercialisation of Infrastructure Projects.

PRIVATISATION OF PORTS

The Ports and Fisheries Department of the Gujarat government has vide Resolution dated 29 July 1999 formulated BOOT (Build, Own, Operate and Transfer) principles for the operation of private and joint-sector ports in the state.

Under the BOOT Package, the role of the government is restricted to limited areas such as security, defence and environment. The financial liability of the Government is also kept to a minimum. The site location and land acquisition is the responsibility of GMB. Under the scheme, the Government is authorised to acquire additional land in the vicinity of the land earmarked for development of the port, for the purpose of port-related activities, establishment of industrial parks, roads and railways, and other port-related purposes. The Government is to initiate development of road and rail corridors and industrial parks to facilitate the development of the port. A Port Regulating Authority is to be constituted to oversee environmental protection, safety, relief, rehabilitation and other matters concerning public interest.

The Rakesh Mohan Committee Report states that under the package, the company assumes the role of a Port Authority and is responsible for the repair and maintenance of existing facilities, including wharves and buildings and also assumes responsibility for new port development such as new berths, reclamation and dredging. The new port company collects all port dues including those of wharfage and berthage. The Port Authority is relegated the role of a regulatory authority and is paid an annual fixed fee, with a variable fee based on either revenue or cargo.

It is surprising that both the Central and State Governments, run by a party which continually invokes the language of national security, is willing to give to a foreign corporation full responsibility for a vital entry point into the country. The Tribunal has been unable to ascertain whether a Port Regulating Authority has been constituted to protect the ecology and the livelihood of the region and its inhabitants.

Dr. (Ms.) Ritu Dewan and Ms. Michelle Chawla in their report 'Of Development Amidst Fragility – a Societal and Environmental Perspective of Vadhavan Port' have opined that "the growth rate of sea traffic is expected to decline due to the prevailing international recession, the collapse of the South East Asian countries, decline in the growth rate in India and the sharp decrease in India's exports". Their Report also states that "as capacities are being increased to more that fulfil even the overestimated traffic projections, a new mega port would divert traffic and lead to under utilisation of built up capacities".

There are 13 ports in South Gujarat. Kandla Port in Gujarat is the largest major port in the country. Before the Tribunal, the locals have questioned the need for a port at Umbergaon. The deponents have opined that "Kandla Port is more than enough to take care of the needs of the region" and "the government should concentrate on upgrading and developing existing ports instead of constructing a new port at the expense of the inhabitants of this region".

The map at Page 3 shows the number of ports in Gujarat State. We too are unable to understand the need for the Umbergaon Port, as the coastline of Gujarat is dotted with ports. We also have to keep in mind the proximity of Mumbai Port and Jawaharlal Nehru Port in Maharashtra State to the proposed site. Phase I of Pipavav Port is nearing completion, and is equipped to handle a range of cargo including LNG. Phase II of Pipavav Port envisions increasing of existing wharf lengths and new berths among other facilities. The proposal for construction of a crude oil terminal is pending before MOEF, (New Delhi).

A half page advertisement on Page 8 of the Asian Age of 2 March 2000 describes the operational efficiency technology at the port as enabling a "zero waiting red carpet experience". The advertisement lyrically describes the project as the "port where favourable conditions of wind and water facilitate round-the-clock, round-the-year operation". Considering the proposed expansion of the Pipavav Port, the necessity of a new port at Umbergaon is questionable.

A simple growth in the number of ports on the Gujarat coast foreshadows a social calamity, with uncertain benefits to society as a whole. While competition is a healthy, its consequences for the people and environment should be understood. In the absence of traffic some of these ports will be forced to shut down in the near future. However, the damage caused to the residents and the environment will be irreparable.

Duplication of work and diversion of traffic will result in many dock and port workers at existing ports being retrenched. Mr S R Kulkarni, the President of All-India Port and Dock Workers Federation, the largest federation of port and dockworkers in India, has extended wholehearted moral and material support to the struggle launched to oppose the construction of a mega port at Maroli (Umbergaon). Mr S R Kulkarni in a press

release has stated that “Umbergaon Taluka is adjacent to the northern boundary of Maharashtra and Maroli is merely 110 kms to the North of Mumbai. Mumbai Port and Jawaharlal Nehru Port are not being used at present to their full capacity. Hazira, Pipavav, Dahej are developed ports in Gujarat and are in proximity to the proposed mega port at Maroli. The Government of Gujarat is also developing Adani Port on a large scale. There is therefore absolutely no need for another port in this area. The establishment of this mega port will result in traffic being diverted from existing ports”.



Women deeposing before the Tribunal at Khatalvad, July 1999.

SITE

GMB identified several sites for location of the Umbergaon Port and has finally short-listed two of these as possible sites for port construction. A *Lagoon Harbour* is proposed at the Varoli creek between Nargol and Umbergaon — the estuarine region at the mouth of Varoli River. The draft in this area is very low therefore dredging will be required in order to maintain a depth of at least 12 metres. Panamic size ships require an average draught of 13.7 metres and cape size vessels of 17 metres plus.

The second proposed site is an *Outer Harbour* with breakwaters along the coast of Nargol. Such a port will require total reclamation and dredging to maintain the necessary depth. The *Information Booklet* on the Project to Develop Umargaon Port as a Commercial Port and Fisheries Port issued by the GMB in May 1999 with regards to location of the port states as follows:

“Option no. 1: Port development plan as an Outer Harbour near the mouth of Varoli River on the open sea coast in the northern direction.

“Option no.2: Port development plan as a Lagoon Harbour near Umargaon through the mouth of Varoli River.”

The salient features of these two options of the project are as under:

DEVELOPMENT PLAN AS AN OUTER HARBOUR ON THE NARGOL SEA COAST

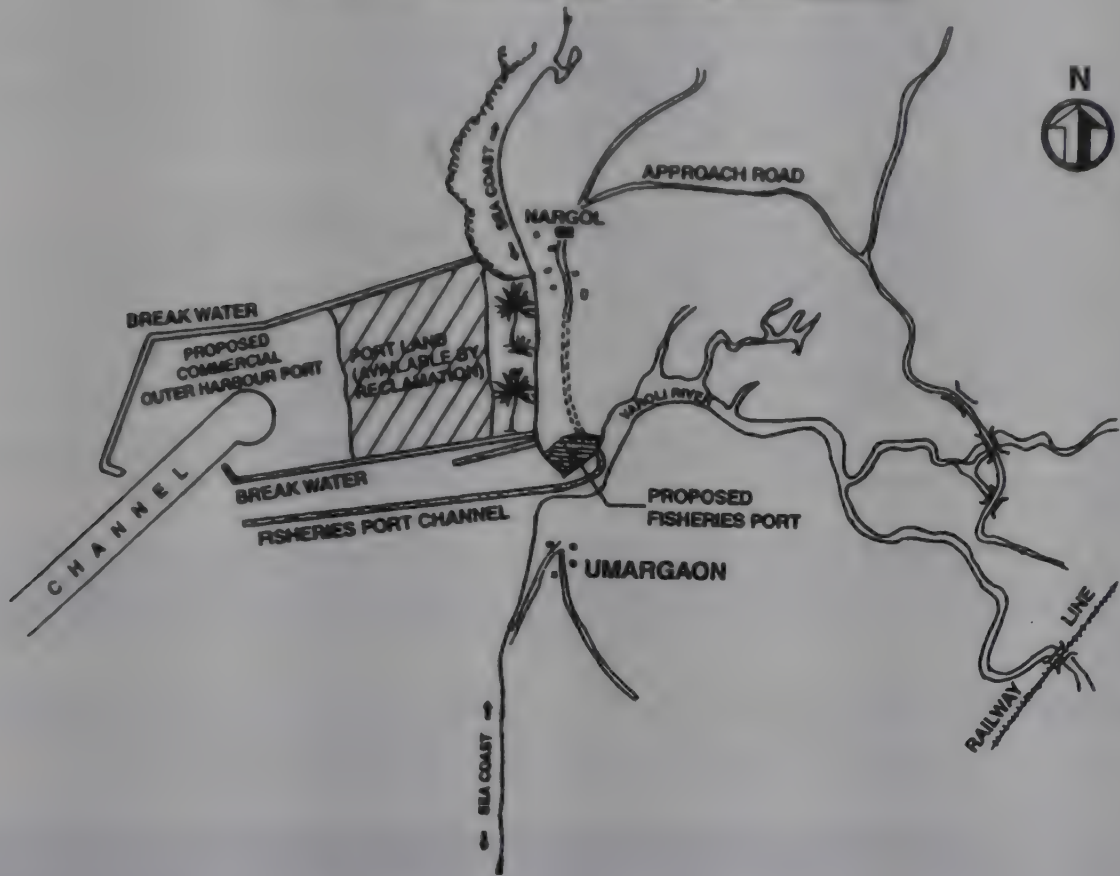
- Under this option the Port will be developed on the open sea coast near Nargol with the two breakwaters.
- The Port facilities will be developed on the reclaimed land from sea.
- The rail and road corridor will be so aligned to avoid developed farms and thickly populated areas in order to keep the displacement to the minimum.

DEVELOPMENT PLAN AS A LAGOON HARBOUR NEAR UMARGAON

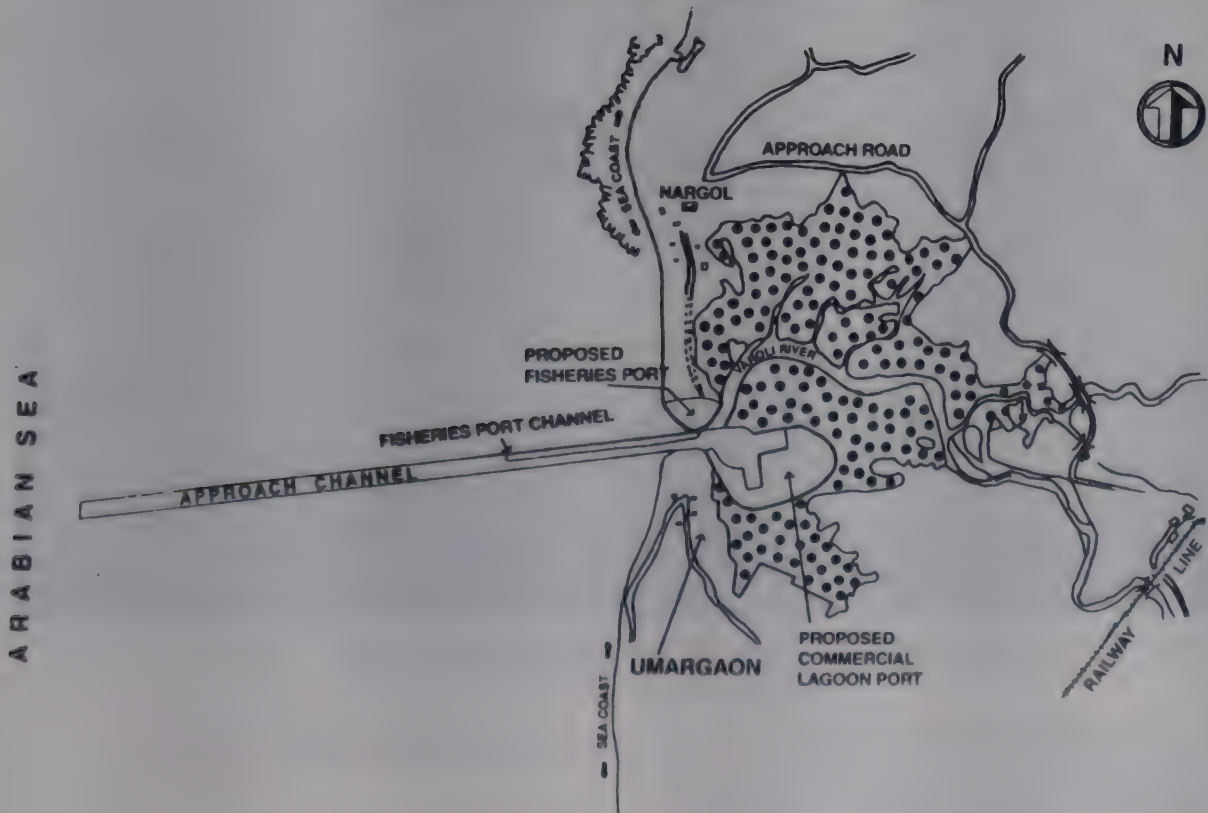
- Under this option the Lagoon Port will be developed in the Umargaon lagoon on the southern side of Nargol through a channel passing through the mouth of Varoli River.
- The Port facilities in the lagoon area will be developed by and large on the government wasteland.
- The rail and road corridor will be so aligned to avoid developed farms and thickly populated area in order to keep the displacement to the minimum”.

'Information Booklet On The Project To Develop Umargaon Port As A Commercial Port And Fisheries Port' issued by GMB in May 1999 denotes the following maps with regards to the options for the port sites.

**PLAN FOR DEVELOPMENT OF UMARGAON PORT
AS A COMMERCIAL PORT - MAP NO. : 1**



**PLAN FOR DEVELOPMENT OF UMARGAON PORT
AS A COMMERCIAL PORT - MAP NO. : 2**



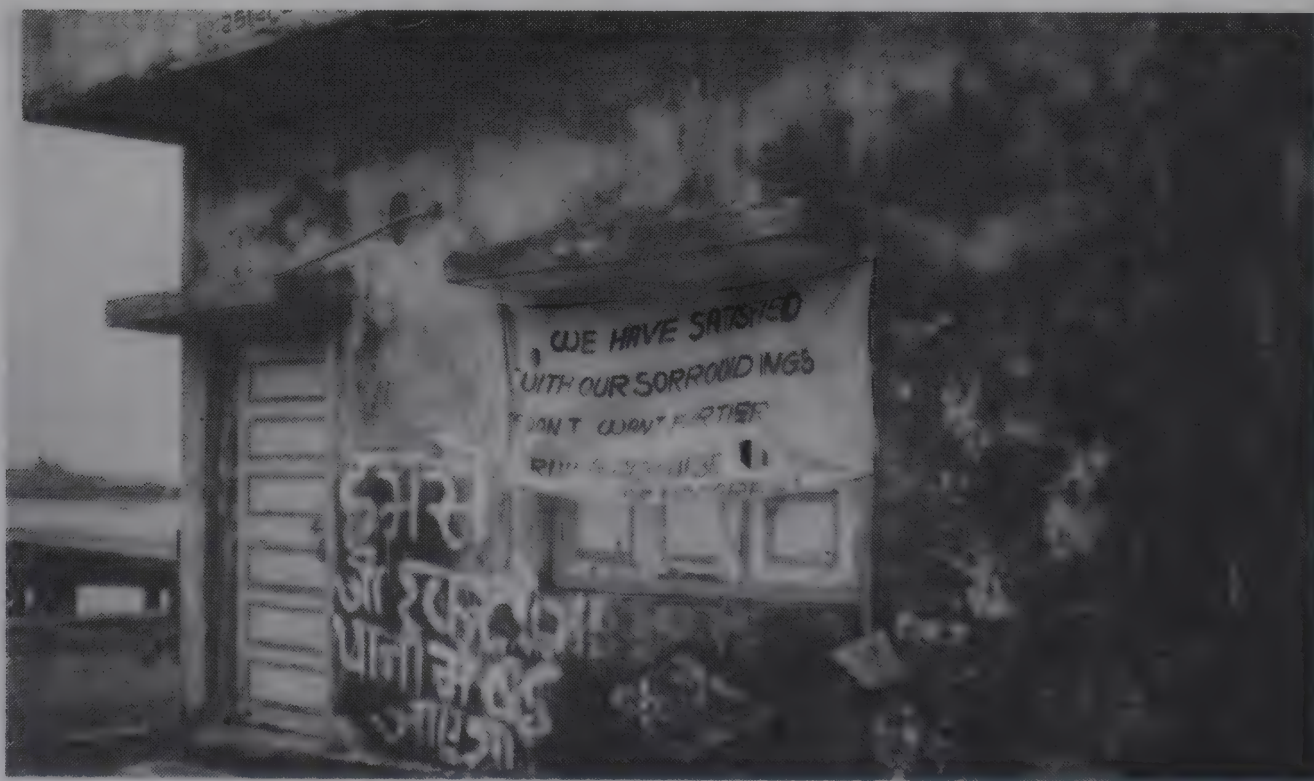
There are 21 villages in the 10 km radius of the project site (core area). The population density is 419 per square kilometre.² The main towns and villages to be affected by the port project are Umbergaon, Dehri, Saronda, Sanjan, Nargol, Khatalvad, Phansa, Maroli, Palgam, Asandevi, Aahu, Talgam and Kalgam.

Mr Raman, Chief Executive Officer of NATELCO, has given the absence of cyclones in the Umbergaon area as one of the reasons for having chosen the proposed sites. "Cyclones along the coast of Kutch and Saurashtra are very common. Whereas in the last fifty years if you look at the cyclonic history data, there is no cyclonic impact in the Maroli-Umbergaon area."

Mr Bittu Sahgal explained in detail before the Tribunal how the realignment of the coastline will clear obstructions and remove barriers which are necessary to break the coastal wind velocity. High velocity winds bring the sea onto land, and the water moves up while hitting what is known as a sand bar. This wave is followed by the waves cresting, thereafter losing velocity and hitting the coral reef and mangroves and slowing down.

Therefore the dredging and deepening of the shore area for construction of a port will destroy the sand bars and mangroves, thus introducing and intensifying cyclones in the region.

When asked about the stage at which the project is pending, Mr Raman replied that a decision with regards to location of the port had still to be taken.



Protest banner at the Proposed Port Site

² As per Summary of the Rapid Environment Assessment Report submitted by WAPCOS

MAGNITUDE

The proposal for Umbergaon Port is to develop it as an all-weather, multi-cargo, full service port. This port is to handle a variety of commodities, such as fuel products — including LNG — cement, coal, chemicals and general cargo.

The Engineering Prefeasibility Report of GMB prepared in July 1996 recites that this port is to be developed for general cargo and industrial cargo and that general cargo traffic is expected to be diverted from Mumbai Port and Jawaharlal Nehru Port. The Report further estimates the annual distribution of the proposed cargo as follows:

General cargo	0.5 million tons (import)
Coal	1.0 million tons (import)
Cement	1.0 million tons (import)
POL products ³	0.5 million tons (export)

The port is being developed to handle cargo of 3 million tonnes per annum.

Water and Power Consultancy Services (WAPCOS), a Government of India undertaking — retained as project consultants by the Gujarat Government and later by NATELCO — has recorded that this port has no assured traffic for general cargo and that the containerisation levels are low, at 30-40% of the general cargo.

The Report published by Maroli Port and Harbor Ltd.⁴ indicates that Umbergaon Port is to be constructed in four phases. In the first and second phase, a total wharf length of 1200 metres will be constructed, and in the third and fourth phase, another 400 metres and 200 metres will be constructed. The total number of proposed berths comprises an aggregate of 1800 metres.

The Engineering Prefeasibility Report also indicates that in accordance with IS: 4651⁵, a channel width of 150 metres has been proposed. IS: 4651 states that the width of a single lane channel should be 3.5 to 5 times the beam of the vessel. The recommendations of IS: 4651 state that the diameter of the turning circle should be 1.7 to 2.0 times the length of the largest vessel to be turned. Therefore a turning circle diameter of 470 metres has been proposed. The above figures indicate that the port will be entertaining panamic size ships.

³ Petrol, Oil and Lubricants

⁴ The consortium of NATELCO and UNOCAL Corporation has formed a company called Maroli Port and Harbor Ltd. to execute the proposed port.

⁵ IS: 4651 is the Code of Practice for the planning and design of ports and harbours issued by the Indian Standards Institution (now Bureau of Indian Standards).

RAILWAY LINES AND ROADS

Mr Gajanan Bhagwan Suryavanshi a resident of the area has claimed that the port will also bring roadways and railways, which will pollute their villages and make their existence difficult.

The apprehensions of Mr Suryavanshi are not baseless. In a letter dated 2 September 1998, WAPCOS has written to the General Manager, Western Railway about the development of a new port in Umbergaon in Gujarat. WAPCOS has requested Western Railway to examine and advise whether the stations at Umbergaon, Sanjan and Bhilad can be expanded to cater to the port traffic. Western Railway has also been requested to examine the feasibility and suitability of creating a new railway station at Bordi Road, where there is a passenger halt at present.

It is interesting to note that this letter also estimates the annual quantum of goods traffic in three phases of development.

	2001	2006	(in million tonnes) 2011
Coal	0.5	1.0	1.5
Container	0.3	1.0	2.7
General Cargo	0.7	1.0	1.33

This letter also admits that the coal will move South to the existing power station near Dahanu. This statement makes one wonder if the Umbergaon Port has been conceptualised because of the scrapping of Vadhavan to facilitate the supply of coal to BSES in Dahanu.

The Executive Summary of the Gujarat Infrastructure Agenda Vision 2010 states that the Maroli Port Project is a top priority project for the purpose of linkage by road from port head to the nearest state or national road head. Additionally, the Port Policy of the Gujarat Government envisions a new Express Highway which will be linked to the port at Maroli.

Mr Raman of NATELCO has acknowledged the above by stating before the Tribunal, "We have to connect the Port to a National Highway and a railway line; so we need to have a small corridor of about 150 - 200 metres".

The majority of the people who will be affected by the proposed construction of a port at Umbergaon-Maroli are fisherfolk. The various communities of fisherfolk own small boats, catch fish by wading through the water or work on others' boats as *khalasis*. The fish caught in this region, including pomfret, lobster, and dara, are a prized commodity in nearby urban centres like Bombay. Fish is caught in the *khazan* land for self-consumption or for sale in the local market. During the monsoon men too catch fish in the *khazan* land as they do not venture into the deep seas. Some families own trawlers, and the fishing communities have invested large amounts of money and labour in this enterprise, on which 75000 people in Umbergaon Taluka alone depend for their livelihood.

The Tribunal spoke to several people whose lives are woven into this local economy and the ecology of the region. Ms Anusharia Laxman Maachi a resident of the area told the Tribunal that her family neither owned boats nor did they catch fish. Like many families, Anusharia's family did not themselves catch fish, but purchase it from the fisherfolk and sell it in the market.

Ms Dhanu Jagdish Maachi, another resident spoke of the close connection between the sea and the people of Umbergaon. She narrated that "since time immemorial the ocean has been our source of livelihood. The ocean is our teacher and guardian. The ocean supports widows and small children. Our children get education from the ocean. If this support is snatched away from us, what will happen to our dependants and us? If we are separated from the sea we will be nowhere."

The local fisherfolk complained to the Tribunal of the chemical pollutants from the nearby Sarigram Industrial Estate, which is polluting the creeks and sea. The industrial estate at Sarigram has caused damage to the environment. Neither the State Government nor its responsible agencies have taken any action against the offenders.

The Tribunal further spoke to farmers, both small and large landholders, whose land may be acquired by the Government for the development of the proposed port. Mr Shamrao Vithal Save said in his deposition before the Tribunal that "I own 5 acres of agricultural land at Dehri and Gowada. I raise chickoos, coconut and rice on my land. I earn an income of Rs 2 lacs per annum. Small farmers own about 3-4 acres of land and raise the same produce as me and are about a 100 in number in Dehri." Mr Save further informed us that the annual agricultural output of Dehri and Gowada – a reflection of the annual total agricultural income – is approximately Rs 29 crores and 61 lakhs.

Mr Sailesh Shah narrated to the Tribunal that “I am a resident of Dehri and my job is farming. I own about 66 acres of land. I raise different types of fruits, vegetables and flowers. My annual income is about Rs. 25 lakhs. Umbergaon taluka and in particular Dehri have occupied a prominent place in the agricultural development of Gujarat.”

The majority of the residents of the area are small landholders, whose crop is mostly for their own consumption and only the surplus harvest is sent to market. The Dalit community, while indirectly dependent on agriculture, is mostly occupied with the weaving of baskets for the fruits and vegetables cultivated on the land. Thus the entire community of this region is tied to the land, its patterns of crops and cultivation, and the loss of these lands spells a catastrophe for their economy and culture.

Some individuals owning small industrial units who spoke to the Tribunal also oppose the proposed port project in Umbergaon-Maroli. Mr Hyder Ibrahim Vohra, who conducts his business from Gujarat Industrial Development Corporation (GIDC) estate, Umbergaon stated that the Umbergaon Industries Association has opposed further acquisition of land by GIDC as the Association is already burdened by insufficient electricity and water supply, and the absence of basic infrastructure.

Thus while the Government and its agencies have advertised the port development as the way to increased prosperity for the region and the state, not one section of the fairly diverse population seems to be in favour of the establishment of a mega-port. Fisherfolk and those tied to the agricultural and small industrial economies of Umbergaon are united in their opposition to the proposed port, and its possibly devastating effects on the social ecology and community of Umbergaon-Maroli.



A woman from the 'Macchi' community returning after collecting Levta from the Khazan land, Khatalvad, July 1999

The International Association for Ports and Harbours (IAPH) guidelines for environmental planning and management in ports and coastal area development states that “ports have traditionally been centres of commercial and industrial communities, their existence accepted within those communities. New port developments are not always so readily accepted. Owing to trends in shipping and cargo handling, the growth in traffic, and the cumulative effects of urban and industrial development, recent port developments have tended to be on a much larger scale than before. As a result, natural features have been affected to a greater extent by artificial intrusions, and sites previously untouched by commerce or industry have been developed to provide the necessary space and access. Trends in bulk and oil shipping, in particular, have led to the development of new deep-water terminals with large storage capacity and in many cases, associated industrial complexes. The concern for environmental protection, which has grown up over the past few decades, may be attributed in part to those changes, but also to an increase in public awareness of environmental matters”.

The Port Policy of the Government of Gujarat also proposes the use of the South Gujarat coastline for leasing to maritime-related industries, in collaboration with leading global manufacturers at subsidised rates. “The Port Policy is an integrated approach covering port development, industrial development, power generation and industrial development. GMB will act as a co-ordinating agency in procuring land, water, power, infrastructure facilities like rail and road and any other clearances to be obtained from the Government of Gujarat or Government of India”.

Mr. Raman, CEO of NATELCO has claimed that “development has to take place, otherwise we will be like Africa or somebody else”.

Mr. Nityanand Jayaraman of Greenpeace, while responding to NATELCO’s rationale for the development of the port, has said, “the problem with ports is not the port but the port-led development. What you call development is considered destruction by a number of people. And that problem has not been resolved. Every single project that is coming up in this country is being opposed because of development being perceived as destruction by people who are affected by it, the so called beneficiaries. Also your port has to be seen in the context of development that has happened in the last 30 years. In South Gujarat there have been several industrial estates including the one near Umbergaon and the industrial estate at Sarigam which has converted the entire South Gujarat into an industrial disaster zone. We call it the armpit of industrial civilisation. In Sarigam the ground water has been contaminated. The people are convinced that it is contaminated, the scientists haven’t decided yet. The people have stopped drinking it. The scientists say that there is no evidence. We are talking of high science, your modernisation as opposed to common sense. Common sense is being given a go-by in most cases”.

EFFECTS ON ENVIRONMENT

Pollution and contamination occur as a consequence of the operations and activities undertaken at the site of the port. The sources of pollution in ports include authorised discharges both in and outside the port area; uncontrolled or unauthorised emissions, discharges and spillage; and related hazards and accidents. Dumping and tank washing are also a cause of contamination.

Ports trade in different types of commodities, including hazardous compounds and crude oil. Dangerous substances form an ever-increasing part of the cargo handled in ports. They may be gaseous, liquid, solid, flammable, toxic, polluting or a combination thereof. Investigations of the International Maritime Organisation indicate that about half of all the cargo handled in ports, including oils, is classified as dangerous substances. A substance is considered dangerous if it produces harmful effects on man or environment when released.

The International Maritime Dangerous Goods Code classifies dangerous substances and these include gases (compressed, liquefied or dissolved under pressure) and poisonous (toxic) substances. These hazardous soluble compounds cause problems in aquatic environments. This source of contamination is already present, and such contamination is already visible in the area due to the industrial estates discharging hazardous wastes and toxins into the waterways. These problems will be compounded by the development of a major port. Such aquatic contamination renders poisonous and inedible the fish of these waterways, on whose cultivation the local residents depend. Some oils contain carcinogens and their presence in the food chains is a risk to man who is the ultimate consumer. A salt marsh is highly vulnerable to soil pollution. Sulfides, sulfites and other chemical reducing agents from industrial sources or from septic municipal sewage, exert an immediate oxygen demand and this oxygen deficiency causes fish kills in the vicinity of discharge. Liquified or pressurised gases are the main causes of air pollution. Leakages of these gases pose significant risks, both of toxicity and of fire explosion. Leakage results in irreparable harm and damage to humans and livestock, agriculture and foliage.

The development of industries in the hinterland of the ports, or the use of polluted soil for reclamation of land, are potential sources of soil and ground water pollution. Soil contamination occurs when chemicals or noxious substances are spilled on the quay or other terminal areas and this also results in pollution of ground and surface water. Mixing of different traffic flows leads to dangerous situations. Accidental spills pose a threat to those living both within the vicinity of the port and those outside the area.

The IAPH guidelines stress the importance of a Buffer Zone between the port and surrounding residential areas. It should contain infrastructural activities, landscaping, etc. A Buffer Zone is necessary to contain the damage in case of accidents and also forms a barrier against noise pollution.

SOCIO-ECONOMIC EFFECTS

Deposing before the Tribunal, the local residents have repeatedly expressed their fears for their social community and livelihoods, their fishing and agricultural economy, if the port and arterial road and railway links are constructed in their villages. Contrary to the myth of prosperity marketed by the state and supporters of the port project, the local residents fear that anti-social activities, currently almost non-existent in the area will increase. They feel that the GIDC industrial estate, its polluting factories and units, seems to be the first sign of this new model of development.

Arjun Narsi Tandel deposed before the Tribunal that “the locals will not receive any benefits by the establishment of the port. The outsiders coming in from Bihar and U.P. will ruin our village. Our sisters, mothers and wives will not be able to move around freely. There will always be a feeling of insecurity in their minds when we are not around. There is no need of additional employment in this taluka as there is no unemployment here. We do not want a port in this region”.

We were repeatedly told that the residents of the region do not face any unemployment, though the quest for a livelihood necessarily entails hard and sustained work. Industries at the GIDC estate Umbergaon provide employment mostly to outsiders, including a sizable number of migrants from Mumbai.

The residents also do not seem to believe that employment opportunities would increase consequent to the establishment of the port. Ms Kalavati Dattatrey Mangela avers that “it is said that we will get employment if the port is located here. We do not believe this promise made by the Government and we do not want any job provided by the authorities. Till date my family has earned its living by going out to the sea and catching fish. By the sale of this fish, we maintain our families. We want to lead our lives in the manner we are accustomed to.”

The Tribunal was witness to the repeated statements of the local residents that they would rather be left alone to “progress” in their own manner, rather than accept the undemocratic dictates of state authorities and corporate investors as to what constitutes “development” for them.

Fishing is the main source of livelihood in Umbergaon taluka. Mr. Jaswant Karbhari, the President of Maachi Samaj deposed, "the sea bed is uneven in depth. The continent shelf is about 10-15 kms from the shoreline. In such conditions the best quality of fish and other forms of marine life is obtained. We use conical bag nets for catching fish. This has cost us an investment of Rs. 4 crores and 75, 000 fisherfolk earn their livelihood from such fishing. To set up a mega port or fishing port will mean the destruction of fishing grounds. The government should forget the erection of either type of port. The fish we harvest is of export quality and it earns valuable foreign exchange for the nation".

Fisherfolk in large numbers have deposed before us that they have been earning their livelihood by means of fishing since the time of their ancestors. People have also stated that the port will result in an increase in ship traffic and that fishermen with small boats will not be able to go into the sea and fish in the area where they have been fishing for generations. The nets that have been placed along the seabed will be damaged by the large ships moving in and out of the port.

The summary of Rapid EIA Report deals with fishing in a most cursory manner, as follows:

Fisheries

Deep sea fishing in the off shore area continues throughout the year except during the monsoon months, when the sea is choppy and boats cannot go to the high seas. In off Maroli sea the important commercial species caught include Bombay duck, Pomfret, Indian Salmon, etc. During the monsoon months many of the fishermen families use the lagoon for fishing purposes.

Impact on fisheries

In the proposed project, both the area to be dredged and the area where the dredged material is proposed to be dumped has low productivity mainly due to high turbidity. The increase in turbidity due to dredging and dumping operations is not expected to cause any major adverse impact on fisheries. The project construction and operation though will hinder fishing activities in a part of lagoon.

The Coastal Zone Management Plan denotes the proposed project site as fishery-breeding-spawning grounds. We are of the opinion that an independent agency should conduct a study of the impact on fisheries in case of construction of the proposed port. Any hasty decision would result in the destruction of breeding and spawning grounds of fish, loss of livelihood for the locals and loss of revenue for the government.

Mr Nityanand Jayaraman of Greenpeace in his deposition said that "I would add this as a note of caution. At the channel through the mouth, there might be very little fishing. But this is like a maternity ward for fish. One might catch fish in the sea but the fish originates here. The industrial development in South Gujarat has reached an extent where the fisherfolk cannot fish in their own local areas".

Agricultural land comprises 31.6% of the core area as has been shown in the table – "Land use patterns of the core area (10 k.m. radius)" contained in the summary of Rapid EIA Report. The Report while dealing with the environmental impact on land environment states "the impacts on land environment in the construction phases on both the sites is not expected to be significant. However at both sites impacts due to soil erosion could take place during construction phase."

Mr Ashwin Fakir Baria, President of the Baria Samaj of Nargol, in his deposition stated that "while speaking to a government servant on the project, I was told not to worry as my community will not be affected. I strongly believe that those who will be getting employment will be outsiders and not from the taluka. Farmers will loose their land. Digging of a channel will increase the salinity of the water. Today we get sweet water from our wells but tomorrow this may not be the case".

The Tribunal visited the farm of Mr Bhaskar Save, who carries on natural farming without the use of any chemical fertilisers. The farm produces coconuts, chickoos, and papayas of the best quality, for commercial purposes. Agriculturists from all over the world have visited this farm and admired the quality of the land and its produce.

The simple economic rationality of such a project as the proposed Maroli-Umbergaon Port must be weighed against the economic, social and ecological impact caused by displacement and destruction of livelihood. Development should not be equated with the creation of pockets of affluence criss-crossed by extensive displacement, misery and ejection of the self-employed thousands.



The contemplated magnitude of this port will require large infrastructure facilities such as roads, railways, warehouses and other facilities for loading and unloading. This will require acquisition of large tracts of land. The GMB, in its Information Booklet, attempts to allay the fears of the locals about the land acquisition that will be required for construction of the port and its connected road and railway networks.

Q.2. Is there going to be any large scale displacement of human habitat and/or land acquisition?

Ans. No. The development of Port at Umbergaon does not require any large-scale displacement of human habitat or any large-scale land acquisition at all. In the Lagoon option, by and large, government wasteland will be utilised. In the Outer Harbour option, land from sea will be reclaimed, hence there is no requirement of any private land.

The locals expressed their disbelief at the GMB's claims. Mr Jadhav V. Bari stated before the Tribunal that "on the one hand, the government came out with a declaration that it would not be acquiring private land. And on the other, notices were sent to many families with regards to the Government's intention to acquire land for the proposed port project".

Mr Bari also stated that there is no trusting the government, that "they will acquire large areas of land, and eventually leave all of us landless and homeless". Mr Jayaprakash Prabhu Bhandari, the Sarpanch of Nargol village, repeated the same fears.

Mr P N Roy Chowdhury, Vice Chairman and CEO of GMB, deposed before the Tribunal that the land acquisition could affect about 400 individuals or families and that 157 acres of land in the lagoon will be acquired. He continued by stating that the "back-up area plan comes after the port plan" and that he did not want to give an impression that there would be no land acquisition "*as a project like this cannot be executed without land acquisition.*"

Both GMB and NATELCO have propagated the myth that the land required for acquisition is barren land, owned by the State Government. Mr Tukaram S. Maachi, informing the Tribunal about the land to be utilised for the port project, said "whatever NATELCO has mentioned about the land being barren is false. We fishermen comprise 7000 of the people who live at Khatalavad out of which 4000 fishermen live at the border. The government has leased 1224 acres at Khatalavad to our Society (Uttam Sagar Khedut Matsodyog Seva Sahakari Mandali) for catching of levta fish. 400 fishermen depend on this land for survival. 200 small boats go to Varoli River, a tributary of the river at Umbergaon for fishing. Rashtriya Sarkari Vikas Nigam has financed us to the extent of Rs. 10.50 lakhs. We fish at the river near Nargol and Umbergaon and are paying off the instalments. If we are deprived of fishing in this area, we

will not be in a position to pay these instalments. There is no barren land in that area as has been mentioned. 450 acres of land has been leased to Mithagar. The fishermen stay on whatever land is left and carry on other occupations. So there is no open place as mentioned”.

SCHEDULED AREA

Umbergaon taluka has been notified as a Scheduled Area under the Fifth Schedule to the Constitution of India by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Act, 1977.

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 mandates that the Gram Sabha at the appropriate level shall be consulted before acquiring land in scheduled areas for development projects. Such consultation is required to take place if even a single person is affected by the project. Under this Act, a Project Affected Person (PAP) is any person whose livelihood or habitat is expected to be extinguished or adversely affected by the proposed project, notwithstanding the legal status enjoyed by them in relation to the concerned resource base for their livelihood or subsistence. The acquiring authority is also required to submit to the Collector full details of the land proposed to be acquired, the environmental impact on public health, water, air, forests, etc., justification for the acquisition and proof that the proposed acquisition is the least displacing alternative.

This information is required to be communicated to the affected families and the Gram Sabha, and members of the Gram Sabha are to be given the opportunity to submit their objections to the project. In case of disagreement between the acquiring authority and the Gram Sabha, the Collector should record the say of both the parties and give his decision in a speaking order. Such order should be sent to the State Government and the Secretary, Department of Rural Development, Government of India.

Under this Act it is also mandatory for the Gram Sabha to approve all plans, programmes and projects for social and economic development before they are taken up for implementation. The above procedure is to be followed even if the urgency clause is invoked.

The Tribunal noted that GMB and NATELCO have evaded questions of land acquisition and human displacement on the plea that the project is in its initial stages. They also declined to give any specific figures regarding acquisition and displacement, on the grounds that the final site had not been selected. NATELCO has attempted to side-step the question of acquisition by stating that notices had been issued by GMB prior to NATELCO being awarded the contract. However, the GMB representative was unable to inform the Tribunal whether any notices had been issued by them.

Jairam Shankarbhai Kini in his deposition informed the Tribunal about how the locals came to know about the proposed port. "Work in relation to construction of the port has been in progress since the last 3-4 years. We learnt of the same only in February 1999; until then we were kept in the dark. The authority has given us no information and we have not been taken into confidence. The work was going on stealthily. The government has to answer as to why the mode of working in secrecy was adopted. We had a strong suspicion that the government was up to something fishy and bent upon causing serious damage to our interest. While the survey work was going on, some of us had questioned the officials and men working as to what was in the offing. Even the Mamlatdar was approached in this regard and he replied that he did not know the purpose of the survey. Till today that is the position adopted by the Mamlatdar. It was only later that we learnt that the real motive behind the secretive approach of the State was because they were proposing to construct a mega-port which would lead to major displacement of people from Golvad at the southern end to Daman at the northern end". The testimonies of residents of neighbouring villages echoed those of Mr Kini. There were repeated protests about the "secretive methods adopted by the Government, which has resulted in keeping us in the dark about its true intentions".

Mr Raman, CEO of NATELCO told the Tribunal, "we (NATELCO) believe that the Gujarat Government, has acted within the limits of the law and has behaved in a transparent manner, keeping maximum number of people informed about the whole process..." and "our people had gone there, the contractors had stayed in Umbergaon, we have hired their boats, we have hired the fishermen for going into the sea and doing some work, collecting samples and other things. And to the best of our knowledge both ourselves and our company and WAPCOS, never once have misled the people. People are aware that we are building a port". NATELCO has put on record that WAPCOS has been conducting studies in the area from 1996-97.

Mr V K Bhavadasan, Executive Engineer, GMB started his deposition before the Tribunal by stating "the IPT has some concern and we have tried to address all the questions in short. The first concern was whether the government has taken the locals into confidence. Regarding that what I have to say is that this process is not a process that started one fine morning. It was considered many years back and our people were constantly in contact with the locals and we were going there, surveying there and have always been in contact with the locals. So the concern that we have not informed the local people is perhaps not true. One thing, we have not put a mike and said that we are going to make a port, that is true. And again the White Paper was placed before the cabinet and the cabinet has approved it. The local MLA, the local MP and the local

political people are aware about it and it was circulated among the Collectors and we have taken the feedback from them”.

The KBSS submitted before the Tribunal, copies of letters sent to UNOCAL Corporation, NATELCO, GMB, MOEF (Gujarat), MOEF (New Delhi) and other concerned authorities, seeking information with regard to the port project. In a letter dated 30 March 1999, UNOCAL Corporation was informed that “the Government of Gujarat is known to keep people in the dark; there is no transparency in their working. They have not felt it fit to tell the people who are likely to loose their homes and livelihood about the said project though the Letter of Intent has been issued”. The letter further requested details about the project and emphasised the importance of people’s participation and co-operation in the successful implementation of a project. UNOCAL Corporation merely suggested that KBSS seek the necessary information from NATELCO and did not itself furnish any details or information.

NATELCO by their letter dated 15 April 1999, offered to show the plans with regards to the proposed development of the port project. Representatives of KBSS visited the office of NATELCO on 21 April 1999, and met the CEO Mr Raman, but were not shown copies of any proposal or plan with regard to the port project. This has been recorded by a letter of KBSS dated 4 May 1999.

In a letter dated 7 May 1999, KBSS had called upon GMB to furnish details about the port project including the Feasibility Report, other environmental studies, MOU, LOI, and a copy of the railway contract. Several reminders have since been sent to GMB, but the Tribunal was informed that no reply or information has been given. The Tribunal was informed that the MOEF (Gujarat), despite requests for information about the proposed port, has failed to comply with the requests. A copy of the letter dated 25 May 1999, addressed to MOEF (Gujarat) was produced before the Tribunal by KBSS.

Letters have also been sent to MOEF (New Delhi) with regard to details and information about the port project. Replies were received from MOEF (New Delhi), the latest dated 16 August 1999, all of which have stated that no such proposal has been received by MOEF (New Delhi) for environmental clearance. Mr Raman asserted before the Tribunal that they will be seeking environmental clearance from MOEF (New Delhi).

A copy of the Information Booklet on the Umbergaon Port published by GMB in May 1999 was produced before the Tribunal by GMB. The Information Booklet mentions two likely sites for the development of the port — an outer harbour on the Nargol coast, and a lagoon port between Umbergaon and Nargol. It further talks about the co-existence of a commercial port and fisheries port in the area. Both of these sites have been mentioned as not falling under the current fishing zone, however most of the relevant information has not been provided or has been kept vague. For example,

it has been stated that 6 to 7 jetties are to be constructed, and that further development will be based on future traffic generation. There is no comprehensive information with regard to the extent of acquisition of land except that "the development of port at Umbergaon does not require any large scale acquisition at all".

The Tribunal finds this statement difficult to believe, as notices stating the intention to acquire land have been sent by the GMB to residents in Palgam, Khatalvad and Umbergaon. A notice dated 30 April 1999, issued by GMB was produced before the Tribunal. To the said notice is annexed a list of plots that are proposed to be acquired for the purpose of the port project.

In a letter dated 11 August 1999, the Tribunal had requested GMB and NATELCO to produce the relevant documents concerning the project at the hearing on 13 August 1999. However, none of these documents were produced at the hearing. Mr Raman told the Tribunal "we will probably be willing to give to the Tribunal our complete details of the project, including the layout, including all the reports. In due course of time we will give it to you". NATELCO had agreed to produce these documents on or before 15 September 1999, which was later extended to 27 September 1999. The deadlines came and went and the commitments remain unhonoured.

These dates passed without any of these commitments to provide the requested documentation or information being honoured. We were surprised to find that in a letter dated 27 September 1999, NATELCO, while refusing to submit further documents, has suggested that the EIA Report is not ready, whereas in the information booklet published by GMB in May 1999 it has been stated "WAPCOS, a Government of India undertaking has carried out detailed EIA studies and has established that there will be no adverse effect to the fisheries port and the nearby area due to the proposed project".

The Tribunal has received a nine page summary of the Rapid Environmental Impact Assessment (EIA) Report from WAPCOS. The EIA Report is a statutory document to be prepared by the port authority to consider in advance the potential environmental effects of development.

The Gujarat Pollution Control Board (Gandhinagar), was invited by the IPT to attend the investigation. GPCB did not appear before the Tribunal and submitted by letter dated 23 August 1999, that, "the Board will act as per prevailing provisions of law on receipt of the proposal from the concerned project proponent".

The locals have no faith in the Gujarat Government and justifiably so because of its appalling track record. The Gujarat Government has failed to control the extensive pollution and environmental damage caused by the GIDC industrial estates. Mr Tukaram Shukla Maachi, a resident of Khatalvad stated before the Tribunal that “the government claims that GMB and the government will have control over the mega-port, but our experience indicates otherwise. Since the last 20 years the Industrial Estate at Sarigam has been dumping its chemical waste into the sea, which has resulted in pollution and has made life difficult for us. Despite 12 years of continuous discussion with the Gujarat Pollution Control Board (GPCB), no concrete steps have been taken. On the contrary there has been a considerable increase in the amount of pollutants dumped into our water. We are therefore not going to again fall prey to the false assurances of the government”.

Mr Mangesh Surajmal Shah corroborated the statements of Mr T S Maachi, adding that the locals will oppose the construction of a new port, as they are still suffering the consequences of the blunder they made twelve years ago by allowing the GIDC to come into their area.

Mr Dhiru Gopal Maachi of Nargol Bunder brought to the notice of the Tribunal the case of the Madhuban dam oustees, who were displaced without any monetary compensation or alternative land being provided for them.

Mr Nityanand Jayaraman of Greenpeace — who has documented the environmental damage caused by the extensive and unplanned industrialisation of South Gujarat — briefed the Tribunal: “I would like to start my deposition with some background on Gujarat. We have been working extensively on the issue of industrial pollution and industry led pollution in Gujarat and there are some things that need to be put forth about Gujarat as a State. It is the political environment that we are talking about. Gujarat has an extremely bad track record of taking no care of the interest of the people, i.e. farmers, fishermen and other marginalised people and even the workers. It does have a very good track record of protecting the interests of industry. The reason for this is the absolute lack of any kind of right to information. In the absence of right to information, no matter what you say the people are not going to be able to take a firm decision. There will be what you call vested interest because there is no information. You are not providing any information or an industry may not be providing any information because they see that as a responsibility of the Government.”

Our Tribunal found witnesses at all the sites complaining of the lack of transparency and the duplicity of the state authorities of Gujarat. Disbelief in a Government on this scale is not easy to dismiss merely as the result of misconceptions.

The unanimous opposition of the residents of Dehri, Padgam, Umbergaon, Nargol Bunder, Maroli, Phansa and Khatalvad, recorded in the hearings of our Tribunal, have also been communicated through the Gram Panchayats and Taluka Panchayats to the concerned authorities. Their resolutions are as follows:

Village	Date of resolution
Umbergaon Gram Sabha	10 March 1999
Dehri Gram Panchayat	22 March 1999
Umbergaon Taluka Panchayat	30 March 1999
Saronda Gram Panchayat	1 April 1999
Nargol Gram Panchayat	7 April 1999
Khatalavad Gram Panchayat	28 April 1999
Palgam, Phansa and Maroli Gram Panchayat	28 May 1999

The GMB has admitted in a letter dated 20 October 1999 addressed to IPT that various Village Panchayats have passed resolutions for “not creating a Port at Umbergaon”. The local MLA, Mr Ramanlal N. Patkar, has in a letter to the Gujarat Chief Minister dated 6 May 1999, requested the authorities to heed these protests and that the port project be cancelled.

Many other associations and societies have also passed resolutions or written letters in support of the people’s protest against the proposed port project. The locals have submitted before the Tribunal copies of such resolutions passed and letters sent by the Umbergaon Bar Association, Radheshyam Mandal (Nargol), Umbergaon Town Manufacturers Association, Maachi Samaj (Umbergaon), Umbergaon Fishermen’s Sarvodaya Sahakari Samaj Ltd., Bariya Samaj, Halpati Samaj, Mayavanshi Samaj and Sagarkhedu Matsyodhyog Seva Sahakari Mandli Ltd. Copies of these resolutions and letters have been forwarded to the Chief Minister of Gujarat, other government departments, the Gujarat Maritime Board, the Mamlatdar, and others.

Public meetings were held at Dehri, Umbergaon, Maroli and Nargol Bunder. We were told that these meetings were attended by thousands of persons, all protesting the construction of the port. Fr Thomas Kocherry, co-ordinator of the World Forum of Fish Harvesters and Fish Workers, addressed one such mammoth meeting at Nargol Bunder.

From the depositions made and the support letters and resolutions produced before the Tribunal, it is evident that the entire Umbergaon taluka is opposed to the construction of a mega-port in this region. Not a single deponent submitted before the Tribunal that he or she desired the port in their taluka. It is also important to note that people had

assembled in large numbers at each sitting of the Tribunal, but due to time constraints, we were only able to hear and record representative depositions. For example, 1500-2000 persons had assembled at the sitting of the Tribunal in Umbergaon Town. The fact that hundreds gathered for the sitting of the Tribunal is a testimony to the ire of the people.

VADHAVAN PORT IN DAHANU TALUKA

In 1996, Peninsular & Oriental Ports, an Australian shipping and port firm, was awarded a letter of intent for the construction of a multi-purpose, all-weather, industrial port at Vadhavan, located in Dahanu Taluka, in Thane District of Maharashtra. This project was ultimately scrapped, as the taluka and its adjacent areas had been declared an ecologically fragile area by a notification from the MOEF, New Delhi. Dated 20 June 1991, this notification stated guidelines for the siting of industries and industrial units in Dahanu Taluka, stipulating that “a buffer zone of 25 kms should be kept free of industries around the outer periphery of Dahanu Taluka, for which provision may be made in the Master Plan.”

We would like to state here that Dahanu taluka is adjacent to Umbergaon taluka; the same range of mountains — the Sahyadris, run through both these talukas and the Dahanu coastline and seawaters extend into Umbergaon. A buffer zone was demarcated to protect and preserve the surrounding area, which has the same, ecological and environmental properties.

Umbergaon taluka falls within this buffer zone. The above provision with regards to “buffer zone” has since been omitted by Notification dated 24 February, 1999 issued by MOEF, (New Delhi).

But bio-diversity and marine ecology does not change with manmade geographical boundaries. The abandonment of a port project in Dahanu taluka is sufficient to question the location of a port in Umbergaon.

FISHING PORT

In its Information Booklet published in May 1999, the GMB has for the first time stated that the Fisheries Department of the State Government has proposed to develop a fisheries port on the northern side of Varoli River, near Nargol. Estimating the cost of this fisheries port at Rs 25 crores, the Information Booklet claims that this port and the proposed commercial port will co-exist without any problems. It does not, however, throw any light on whether the increased traffic because of the Fisheries Port and Commercial Port will affect the breeding and spawning of fish on the South Gujarat coast.

The White Paper on Development of Ports of Gujarat does not mention Umbergaon as a potential site for a fishing port; however, it earmarks Okha, Jakhau and Vansi-Bori as possible sites for development as modern fishing harbours / ports. The locals had requested for construction of a fishing port in the area in the early nineties. This request as also a request for the repair of jetties had gone unheard by the concerned authorities. The Government has now done an about-face and has expressed its willingness to construct the Fishing Port, in seeming response to the demands of the local fisherfolk — a willingness, naturally arousing suspicion.

Fr Thomas Kocherry, coordinator of the World Forum of Fish Harvesters and Fish Workers, has opposed the construction of both fishing and commercial harbours in Umbergaon. He has stated that “Umbergaon is a traditional natural fishing harbour and it has a sustainable fishery. Building a fishing harbour will invite more mechanised boats and the traditional fishing community will be displaced like the Veraval fishing community. And it will not remain as a sustainable fishery”.



Woman at Dehri village expressing their concern about the proposed port before the Tribunal, July 1999

The physical impact on the environment caused by a port principally concerns water quality, air quality and contamination of the soil, sea or river bed and ground water and disturbance of the coastal and estuarial region. The International Association of Ports and Harbours (IAPH), in their *Guidelines for Environmental Planning and Management in Ports and Coastal Area Development*, have stated that it is necessary to consider the benefits stemming from the activities that would give rise to actual or potential environmental damage or detriment. Thus a balance must be struck between the social and ecological costs of a project, and the benefits that flow from its development.

KHAZAN LAND AND MANGROVES

The proposed site for the lagoon port is upon *khazan* lands — wetlands or mud flats — between Umbergaon and Nargol. The Concise Oxford Dictionary defines *mud-flats* as “a stretch of muddy land left uncovered at low tide and ‘wetland’ as a swamp, marsh or other usually saturated area of land.”

Wetlands are a highly productive spawning ground-cum-nursery and feeding area for marine life. They are not only rich in food base for spawning fish but also protect fish from strong currents, sunlight and predators. Mudskippers (‘*levta*’) are found in large numbers in wetlands, and the aquatic life that they support aquatic life basic to the sustenance of the fishing industry.

Wetlands perform several other functions. Steward Maltby in his book *Waterlogged Wealth* has stated that wetlands are among the most productive and fertile, as also the most threatened, ecosystem in the world. They are an essential life support system and play a vital role in controlling water cycles and help clean up the environment. Wetlands filter sediments and pollutants out of water and thereby maintain water quality. They protect coasts and inland areas from floods, thereby reducing the danger posed to people and agriculture. Wetlands yield ecologically important species like crayfish, shrimps, oysters, caymans, and mangroves. The economic values of wetlands show that they more than earn their keep and place in the landscape. It is essential that the value of wetlands should not be set according to their financial value when converted to some other use. The vital ecological function played by wetlands demonstrates that their value cannot be estimated in purely economic terms, as they are part of a larger ecosystem of seas, coastal lands, and the livelihoods these sustain.

The Indian Government, recognising the importance of conservation of wetlands, has instituted a scheme for their conservation and a National Wetlands Committee has been constituted under the Chairmanship of the Secretary, MOEF (New Delhi).

The majority of fishermen in Umbergaon go fishing in the *khazan* land in small boats or on foot; very few of them have larger boats for deep-sea fishing. The Gujarat Government, recognising the dependence of local fishermen on these *khazan* lands, leased 1224 acres of *khazan* lands to the Uttamsagar Khedu Matsyodhyog Seva Sahakari Mandal Ltd in 1993. Mr Tukaram Shukla Maachi, a resident of Khatalvad, stated that “since the times of our ancestors we have been earning our livelihood by means of fishing. 15 years ago we had to agitate because of government wanting our land. At that time our unity convinced the Government that our livelihood depends upon the fish catch in the creeks and mud flats. That was when the government gave us 1224 acres of *khazan* and creek land on lease for a term of 30 years and later extended it to 99 years. Since that time we have been earning our livelihood out of different fish caught from the mud-flats and creeks”.

In a deposition, another local stated that “I am a resident of Palgam and for 8 months we work as *khalasis* outside the village. The remaining 4 months we earn a livelihood by catching fish in the *khazans*. From the *khazans* we get a catch worth Rs.25-30 each time. Sometimes we go two to three times a day. When I am out of the village my family depends on the livelihood from the catch from the *khazans*. This is the pattern of living of almost all the fisherfolk in the village.” This is reinforced by the WAPCOS EIA Report quoted earlier, which details that “during the monsoon months, many of the fisherfolk families use the lagoon for fishing purposes.”

If the lagoon port is constructed on *khazan* land, it will result in the ruin of one of the finest spawning and breeding grounds of fish in the country, and will force people to leave the area in search of new fishing grounds. Moreover, a rich ecosystem, which has been supporting a lifestyle and protecting the area for scores of years, will be destroyed. Wetlands play a very important role in this area, which already has a high concentration of polluting industries, discharging toxic waste in water bodies. Wetland plants are known to remove heavy metals, pesticides and other toxins from the water.

The construction of the lagoon port will also lead to destruction of mangroves. Mangroves support the marine food web by providing food supply and nursery functions for many species including commercially important fish, shrimp and crab stocks. The organic debris produced by vegetation, together with the shelter it provides and local environmental conditions, promote food-chain support, and spawning and nursery functions. Researchers have established the importance of mangroves in providing physical stability to the shorelines by preventing erosion.

The Summary Rapid EIA report states that “a small mangrove patch of about 8 hectares may have to be acquired”, and attempts to justify such acquisition by stating that since the mangrove patches are small, the deleterious impact will be within acceptable limits. However, the destruction of mangroves will deplete the breeding, spawning and nursery grounds of fish of major economic value—including those earning foreign exchange for the country.

FOREST LAND

The coastline of Umbergaon taluka has been given to the Forest Department. Sarovar trees have been grown and maintained by the Forest Department along this belt to prevent soil erosion. The 7/12 Extracts have identified this area as "Reserved Forests". This green belt will be sacrificed to provide infrastructure and space for the construction of roads along the coastline.

EFFECTS OF BREAKWATERS AND DREDGING

The IAPH guidelines for Environmental Planning and Management in Ports and Coastal areas categorically states that the engineering works for ports and harbours interfere with the regimen of waves, currents and sediment transport.

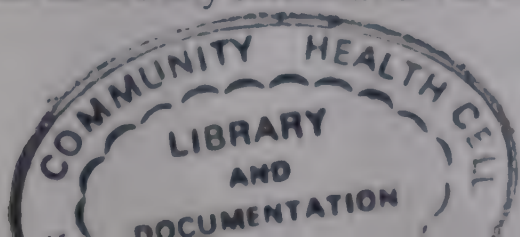
Shore connected breakwaters, offshore submerged breakwaters, and dredging change the local direction and intensity of wave action. This causes erosion of the shore on the down-drift side. Dredged channels and breakwaters result in accumulation of sediment on the up-drift and erosion on the down-drift side. Disturbance to long shore movement of water by structures can lead to local stagnation or recirculation of pollutants, such as those discharged from sewer fallout. Any interruption of long shore sediment transport will have an effect over a considerable down-drift distance. Harbours shelter the neighbouring coast from wave action and tidal currents, which in turn create slow moving eddies, which retain rather than disperse fine sediments and pollutants, thereby rendering adjacent beaches unpleasant and unsafe for any normal purposes like bathing.

Dredging gives rise to problems of turbidity. Where there is dredged material in large quantities, such dredged material will frequently need to be deposited in the sea and may contain significant amounts of chemicals and other contaminating substances.

Mr Raman, CEO of NATELCO, has admitted that the proposed site of Umbergaon Port will require dredging in a region of 20 million cubic metres as the port will have a depth of 12 metres. Siltation of estuaries is encouraged by this reclamation. Therefore ports initially free from silt will become contaminated over time.

The Outer Harbour on Nargol sea coast is to be developed on land reclaimed from sea with two breakwaters. The depth at both the options is very little so dredging will have to be regularly done to maintain the necessary depth.

Eagle Lyon Pope Associates, Port and Marine Consultants (London) have, in their *Maroli Port Development Study - A Review of Marine Operational Aspects*, indicated that the proposed site suffers from the requirement of relatively extensive dredging, both for the approach channel and for the outer harbour. The Report also states that the type of material to be dredged is not yet known and this will need to be the subject of a detailed investigation before any commitment to the site can be given.



NATELCO AND UNOCAL CORPORATION

The Report of Maroli Port and Harbor Ltd indicates that the GMB floated a global tender in August 1997 for private development of five ports including Umbergaon Port. The development rights of Umbergaon Port were awarded to a consortium consisting of the infrastructure division of NATELCO and UNOCAL Corporation on 5 September 1998. A *Times of India* report of 29 August 1998 said about the undertaking that

The NATELCO - UNOCAL consortium, which also proposes to take up other important projects in the State, including an LNG project, a power project, and an industrial estate, with export processing zone, would thus supplement the efforts of the State Government to speed up overall development of this region.

UNOCAL CORPORATION

UNOCAL is a major American-owned oil and gas conglomerate based in California. There is no evidence to show that UNOCAL is experienced in the construction of ports anywhere in the world. There are however reports of cases filed against UNOCAL for environmental infringements in various parts of the world including the U.S.A. and in Myanmar (Burma).

In the U.S.A., a formal legal complaint has been lodged with the California Attorney General calling for revocation of the company's charter and dissolution of the company. The environment and ecology of Guadalupe, Avila Beach, San Francisco Bay, Mountain Pass in San Bernardino Country, California have been allegedly ruined due to the activities of UNOCAL Corporation. In 1997, UNOCAL Corporation received notification from the U.S. Environmental Protection Agency that the company may be a potentially responsible party for such devastation at 41 sites, and another 41 sites have subsequently been added to this list.

The company is a primary producer of fossil fuels. Fossil fuels release greenhouse gases and are changing the global climate, resulting in an environmental crisis. In Burma, pipelines carrying such gases have been laid by UNOCAL Corporation through pristine rain forests. Burmese groups have complained that the pipeline construction has caused relocation of homes, use of forced labour and other abuses of the Burmese people over and above environmental destruction an allegation which the Corporation denies. It is therefore surprising that the Gujarat Government and GMB have chosen

not to investigate the reputation of a company, before awarding it a major contract for construction. Mr Raman, while defending UNOCAL Corporation, has stated that

We have their (UNOCAL Corporation) environmental statements and we have been interacting with UNOCAL and we have reason to believe that UNOCAL behaves in a very responsible way and I believe they will continue to do so.

NATELCO

National Telecom of India Ltd (NATELCO) is a Mumbai-based telecommunications company, established in 1987. Mr Prakash Jain, a San Francisco-based NRI, is the Vice-President and Managing Director of NATELCO. In 1997, it established an infrastructure division. This is the first time NATELCO is venturing into construction of ports.

Mr Raman, CEO of NATELCO, told the Tribunal that “we don’t have port expertise but we are co-opting people who have got expertise and we feel that finally when persons come in we will see that they are world renowned persons who have got substantial experience in running a world-class efficient port”. Mr Raman mentioned to us that an independent company will own the port, but he did not throw any light on how the company ownership will be established after GMB, NATELCO and UNOCAL finish their construction.

The gross receipts and profits of NATELCO for the last three years are as follows:

YEAR	GROSS RECEIPTS	PROFIT AFTER TAXES Rs (Crores)
1995-96	147	12
1996-97	168	2
1997-98	235	7

FINANCING OF THE PROJECT

Mr Raman has stated that the Umbergaon Port Project is a US \$300 million project, in which the GMB has an 11% stake. Both NATELCO and GMB have failed to produce before the Tribunal the contract executed between the concerned parties for the development of the port. Therefore we have no knowledge of respective equity shares in the project. Mr Asit Mehta has deposed before the Tribunal that even with a debt equity ratio of 70:30, NATELCO will be hard pressed to bring in its share of equity as its profits are about Rs 5-10 crores per annum.

Mr Raman told the Tribunal that the financial strength of NATELCO is of no relevance to the port project. Mr Bittu Sahgal, however, asserted that the financial strength of the company is very important, as the environmental protections necessarily required to be implemented are expensive, which means that the company should be in a financial position to meet these expenses.

Mr Asit Mehta has also voiced his apprehension before the Tribunal that under the guise of a minor port, a mega-port one will be established. Though the company may start small, Mehta projects an expansion into a mega-port, which will require an investment of approximately Rs 12,000 crores. Mr Mehta has based his apprehension on a meeting he had with Mr Raman several months ago in which Raman was unsure as to whether the port would be expanded or not, and whether the investment would go beyond Rs. 12,000 crores or not.

Thus in the event that the full finances for construction and the massive environmental safeguards it will require are not met by the companies and government boards involved, the local people will be sacrificing their ecology and livelihoods for a nothing.

Estimated Cost

The Executive Summary of *Gujarat Infrastructure Agenda: Vision 2010* indicates that the Maroli Greenfield Port (Phase I) will require an investment of Rs. 1,250 crores and the Maroli LNG Project will require an investment of Rs. 1,932 crores. Mr Raman has submitted before the Tribunal that the estimated cost of this project is approximately US \$300 million.

COASTAL ZONE MANAGEMENT PLAN

The Ministry of Environment and Forests (MOEF), New Delhi issued the Coastal Regulation Zone Notification (CRZN) on 19 February 1991. CRZN regulates and prohibits certain activities within the Coastal Regulation Zone (CRZ). In popular parlance CRZ is the area between the low-tide line and high-tide line, plus 500 metres on the landward side of the high-tide line. The coastal stretches include seas, bays, estuaries, creeks, rivers and backwaters that are influenced by tidal action. The CRZN pertaining to creeks, rivers and backwaters has to be at least 50 meters or the width of the creek, river or backwater, whichever is less.

Under the CRZN, construction of ports and harbours requires clearance from MOEF, New Delhi. The expansion and modernisation of existing ports and harbours including fishing harbours requires environmental clearance from the Ministry of Surface Transport, New Delhi except those falling under CRZ – I where environmental clearance has to be obtained from MOEF, New Delhi. Further CRZN requires each State Government to submit a Coastal Zone Management Plan (CZMP) to MOEF, New Delhi. The State of Gujarat has submitted such a CZMP, of which a copy was given to the Tribunal.

The CZMP denotes the number of minor ports in each district. Onjal, Vansi-Borsi, Billimoria, Valsad, Umersadi, Kolak, Maroli and Umbergaon are shown as minor ports in Valsad district. The CZMP at no place talks about the proposed construction or expansion of the Umbergaon port. The Tribunal visited the existing Umbergaon port, which comprised of two passenger jetties.

The CZMP has a list of existing beaches developed for tourism in each district. Nargol in Valsad district, which is the proposed port site, is shown under this list. The map annexed to the CZMP denotes this site as “fisheries-breeding/spawning grounds,” and is included under CRZ–I. The area that falls under this category as it is ecologically sensitive and important because of mangroves, breeding-spawning grounds of fish and a place of great beauty. In the map the proposed site, the area between Umbergaon and Nargol is denoted as ‘mud flats’.

The MOEF, New Delhi has constituted the National Coastal Zone Management Authority to protect and improve the quality of the coastal environment. Kinara Bachao Sangharsh Samiti sent a detailed letter dated 13 August 1999 to the Authority explaining their opposition to the port.

PROCEDURES AND CLEARANCES

Under the Environment Impact Assessment Notification dated 27 January 1994 the MOEF, New Delhi is required to grant site and environment clearance in respect of

certain projects including ports and harbours. Such clearance is necessary in case of a new project as also expansion or modernisation of an existing project.

Prior to making the application for clearance the following two requirements must be met:

I. The project developer has to get prepared and make available the following:

- Environmental Impact Assessment Report
- Environment Management Plan
- Detailed Feasibility Report
- Risk Assessment Report and Disaster Management Plan
- Rehabilitation Master Plan; and

II. A *public hearing* is to be conducted by the State Pollution Control Board.

The application for clearance submitted to MOEF, New Delhi must include the above-mentioned reports and details of the public hearing. The reports submitted are to be assessed by an Impact Assessment Agency and a Committee of Experts may be constituted for consultation. It is important to note that no construction work relating to the establishment of the project can be undertaken until the site and environmental clearance are obtained from MOEF, New Delhi.

The Coastal Zone Regulation Notification of 1991 also makes it obligatory for the developer of ports and harbour to obtain sanction from MOEF, New Delhi. In case of expansion or modernisation of existing ports and harbours including fishing harbours, sanction of Ministry of Surface Transport, New Delhi will suffice but if the area is classified as category CRZ - I (1), sanction has to be granted by MOEF (New Delhi) as these are ecologically sensitive and important areas.

Copies of all the reports should be made available to the locals in advance, to enable them to make an informed and effective representation at the public hearing. The public hearing should be conducted at the proposed site to enable the attendance of persons likely to be affected by the project. An at-site hearing will enable an effective articulation and better comprehension of the real issues.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

Prior to commencing any project activity it is necessary to determine the site and assess the environmental damage likely to be caused by the project. The size of a project and sensitivity to the environment are aspects which warrant the conducting of EIA. EIA assesses the physical, biological and socio-economic effects of a project so as to arrive at a logical and rational decision in respect of the feasibility of a project.

Depending on the outcome of EIA, steps can be taken to identify and consider alternative sites.

EIA conducted by a project developer requires review by an independent panel containing experts, and in appropriate cases recommend a fresh EIA or change of project site.

The Information Booklet published by GMB deals with the aspect of pollution in an evasive manner.

Q.13. Is it true that there would be wide spread pollution because of the development of a Commercial Port?

Answer: No. WAPCOS, a Government of India Undertaking, has carried out detailed environmental impact assessment study and has established that there will be no adverse effect to the Fisheries Port and the nearby area due to the proposed project. For the various activities, the norms laid down by the Ministry of Environment and Forests will be complied with in totality and will be well below levels prescribed by the Ministry of Environment and Forests. It would be pertinent to mention here that as a part of the statutory approval process, a public notification on the subject will be issued and there will be an open hearing where the people of Umargaon area will get an opportunity to have the entire issue discussed in detail".

The summary of the Rapid Environment Impact Assessment Report deals with the effect of dredging and breakwaters.

Lagoon Site: The depth of lagoon harbour will increase from +2 m to -12 m after dredging, as a result of which the productivity will be marginally affected. Since in the lagoon site wet dredging has been proposed, the adverse impacts will be less as the northern part of the lagoon could be still used for fishing. The disposal of dredged material is proposed beyond the 20 m contour in the deep sea. The impact on marine life is the burial of benthonic organisms. Generally the organisms buried may not survive, but recolonization of the site can occur readily with the cessation of dumping.

Outer harbor site: At the outer harbour site the existing benthic ecology will be affected due to the dumping of the material to reclaim the site. Due to construction of breakwaters etc. not only the site will be disturbed but a strip of seawater nearly the periphery of the breakwaters will also be adversely affected. But as site has low biological productivity levels, the impact will not be significant. However breakwaters especially on the seaward side, could harbour a variety of organisms, which is a positive impact".

NATELCO and Gujarat Maritime Board have both stated that the Environment Impact Assessment and Detailed Project Report could not be completed because of opposition from the local people. However, at another stage, Mr Raman, CEO of NATELCO has stated that the EIA has been conducted by WAPCOS, that all the data has been collected, and the report would be ready by the end of August 1999.

Mr Bittu Sahgal has emphasised the importance of conducting ecology studies of fresh water and salt-water ecosystems, as several factors such as the migration pattern of fish, the actual ecological circumstances in which the fish survive, and other factors are not known. Prior to starting any work, it is necessary to know what will happen with the change of currents and the manner in which the breakwaters and jetties will affect the abbeys and tides. Mr. Sahgal is of the opinion that those studies should be conducted by Gujarat Maritime Board and Government of Gujarat, as it will be beyond the capacity of NATELCO.

We suggest that the detailed base-line studies be conducted to correctly portray the actual ground situation. Studies of bio-diversity and marine ecologies should be conducted by an independent expert team constituted by MOEF, New Delhi in consultation with non-governmental organisations working in the field of environment.

The attitude of the authorities has been aptly reflected in the statement made by Mr. P N Roychowdhury, Vice-Chairman and CEO of GMB.

Human suffering is more easily understood, like shifting people, human hardships can be compensated easily. Tangible hardships can be compensated. After all you can always pay price for a piece of land and there is nothing unique in those pieces of land, this is the way we judge cost and benefit. I mean this is science.

In the case of Vellore Citizens' Welfare Forum v Union of India [(1996) 5 SCC 647], the Supreme Court has agreed that the concept of "sustainable development" has come to be accepted as a viable means by which to eradicate poverty and improve the quality of human life, while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report⁷ means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs."

Industrial estates and large infrastructural projects have mushroomed all over the State of Gujarat, displacing thousands of families and irreparably polluting the common natural resources. Indiscriminate and unregulated "development" sponsored and supported by the Government is bound to cause unrest amongst the people. It is time the Gujarat Government take stock of its activities, and redefine its concept of development in accordance with the needs of the people. Otherwise an ecologically rich and sustainable environment will be lost.

HISTORIC IMPORTANCE OF SANJAN

The village of Sanjan is where the Parsis first settled when they came to India. The flight of the Parsis from Persia to India has been chronicled in the "Kisseh-i-Sanjan" (The story of Sanjan). "Kisseh-i-Sanjan" is the oldest account of the coming of the Parsis to India. It was written in Persian verse by Bahman Kaikobad and has been translated into Gujarati and English.

"Kisseh-i-Sanjan" narrates that Zoroastrians fled Persia when the rule of Yazdegird ended. Ultimately they landed at Sanjan where Jadi Rana, the ruler of Sanjan, granted asylum to the Parsis and allowed them to build their settlement. The "Kisseh-i-Sanjan" does not mention the year when the Parsis landed in Sanjan but scholars such as Sir (Dr) Jivanji Modi have estimated the year to be 785 A.D.⁶

Sanjan Memorial Column has been constructed at Sanjan in 1917 to commemorate the landing of the Parsis in India. The Parsis came to Sanjan via Varoli River, which is one of the sites proposed for the port. Sanjan village should be designated as a place of historical importance and be so protected.

6 "Kisseh-i-Sanjan" by H. E. Eduljee

⁷ The Report called our *Common Future* and more popularly known as the Brundtland Report was submitted by the World Commission on Environment and Development in 1987. This Report lays down the salient principles of sustainable development.

1. Lack of transparency and people's participation

The GMB has deliberately neglected to disclose the details of the proposed port project before the locals. WAPCOS, a Government of India undertaking, was appointed as a consultant to conduct a survey of the proposed site by GMB in 1996. A global tender for this project was floated in August 1997 and development rights were awarded to the consortium on 5 September 1998.

The survey was conducted in total secrecy and concerned locals were given misleading information. It was only in February 1999 when the locals confronted the surveyors, were they told that Umbergaon had been selected as the site for a large industrial port.

The local organisations made enquiries with the concerned authorities and the consortium but were given no detailed or relevant information. The Information Booklet of GMB is most elementary, gives no concrete data or clear picture of the project. GMB and NATELCO have also failed to submit the documents called for by the Tribunal, despite their promises to do so at the earliest.

Umbergaon Taluka has been notified as a Scheduled Area under the Fifth Schedule to the Constitution. Prior to commencement of any project, the Gram Panchayat and the Gram Sabha are to be consulted. The Tribunal noted that intention to acquire land notices have been issued though the locals have not been consulted about the project.

The right to information is a fundamental right under the Constitution. The Government of India and State Government have been repeatedly highlighting their policy of absolute transparency in functioning, and people's participation in decision making. The attitude and conduct of the GMB and State of Gujarat in the present case belies the above promises and liberties, and reflects on the total disregard of the state for the right of locals to be involved in activities having a direct impact on their lives. In the absence of transparency, people are unable to take an informed decision.

2. Total opposition of the people to the proposed port

The sittings of the Tribunal in the local areas were attended by a large number of people. There was unanimous opposition to the project. Not a single person deposed before the Tribunal in favour of the project or felt that the project would in any manner improve their lives.

The Resolutions passed by different Gram Panchayats and the Taluka Panchayat also reflect the sentiments of the people towards this project. Various local associations including the Umbergaon Town Manufacturers Association have passed resolutions or made representations against the port project. Large public meetings have been

held in different localities in protest. Memorandums have been submitted to the authorities indicating people's resistance.

The authorities are aware of the concerns of the locals and the opposition to the proposed port. They have failed to initiate an effective dialogue with the locals or disclose the details. An attempt is being made to force this project on an unformed, unwilling and resistant people.

3. Sustainable Livelihood

The residents of the area depend on fishing and agriculture as their main source of income. The Tribunal has been told by the locals that these activities have been carried on since the time of their ancestors, they have no complaints and are satisfied with their way of life.

The Varoli creek is the breeding and spawning ground for fish and supports fishing activities in Umbergaon Taluka. The fish found in this area such as lobsters, pomfrets and dara are of high commercial value especially in the Bombay market. The fishing community has invested large sums of money in this activity. Many are small-time fishermen who catch fish for self-consumption and sell the surplus in local markets.

The area is agriculturally rich and the Tribunal visited farms growing fruits, vegetables and flowers. The landholders have deposed before the Tribunal and stated that they earn a satisfactory agricultural income per year. The small landholders depend on their land for survival. Those locals who do not own boats or land, work as labourers on others' boats or farms. The economy supports supplementary activities like basket weaving for transport of agricultural produce.

On speaking to the people it is clear that the locals are able to survive and maintain their families on the land and sea harvest. The government has not provided any facilities to support these activities in the past. The economy of this area is dependent on nature and should not be disturbed. The Sarigam Industrial Estate has already led to contamination of the creek waters. Further interference will only destroy a sustainable means of livelihood.

4. Ecologically Rich And Sensitive Area

The proposed site for the lagoon port is *khazan* land or wetlands. Wetlands perform several vital functions including that of being spawning, nursery and feeding grounds for fish.

Fisherfolk go wading in *khazan* land to catch *levtas*. During monsoons the entire fishing activity in this region is centred around *khazan* land. Recognising the close connection between the fishermen and this land, the State Government leased 1224 acres of such land to Uttamsagar Khedu Matsyodhyog Seva Sahakari Mandal Ltd. Large parts of this area are covered by mangroves, essential to retain the ecological balance of the area and support the marine food web.

In the case of *People United for Better Living in Calcutta v. State of West Bengal* (AIR 1993 Cal. 215), the Supreme Court had restrained the reclamation of wetlands due to their ecological importance and material benefits. The importance of striking a balance between development and ecology has also been stressed in this judgement.

Due to its ecological sensitivity this area falls within Category I of the Coastal Regulation Zone Notification. No activity can and should be carried on in this area without the prior permission of MOEF, New Delhi.

The economic values of wetland functions have shown that they more than earn their keep and their place in the landscape. The value of wetlands should not be set according to their purely financial value when converted to some other use.⁸

Rich ecosystems throughout India are being destroyed for development and commercial projects. The State Government should ensure that such biologically diverse ecosystem as in Umbergaon and its surrounding areas is protected.

5. Enticement by Promise of a Fishing Port

To counter the opposition of the fisherfolk, the State Government is attempting to appease them by offering a fisheries harbour. The locals view this offer with suspicion as their previous request in the early nineties for such harbours went unheeded. Requests for mere repair of jetties were also not acted upon.

People apprehend that the offer of a fishing port is a pre-condition to the setting up of an industrial port. It will be an excuse for the authorities to bring in bulldozers, construct roads and railway lines and establish other port facilities.

Excerpt from Thomas Kocherry's letter to the KBSS, dated 6 July 1999:

It is very important to note that the catch per fishing vessel in all the sectors is going down in an alarming manner all over India. This is mainly due to over capacity. Particularly we have too many boats and we have too many fishing harbours. We need some more small landing centres where there are rough seas in the eastern coast of India. This is to protect the traditional crafts. Creating more fishing harbours and fishing vessels are not going to create more fish rather it will deplete fish resources.

Under the guise of building a fishing harbour, the government will build a commercial harbour, which in turn is more dangerous to the fishing grounds than if they build a fishing harbour. At present there is no need of fishing harbour in Umbergaon. The fishermen are doing very well and they have a sustainable fishery. Let us not destroy that by building a fishing harbour. Once the government builds a commercial harbour, fishing will not be allowed there. So it is better that we do not open our very good fishing ground for destruction in the name of fishing harbours and commercial harbours.

⁸ Waterlogged Wealth by Edward Maltby

The Tribunal finds it difficult to believe that a fishing harbour and an industrial port of the proposed magnitude can co-exist. The industrial port will ultimately bring an end to fishing activity in this area. In the name of a fishing harbour, the State is intending to open rich fishing grounds to commercial exploitation and consequential destruction.

6. Double Standards Adopted by the Gujarat Government

The Coastal Zone Management Plan submitted by the Gujarat Government to MOEF, New Delhi denotes the proposed port site as "fisheries-breeding/spawning grounds." Nargol is a place of great beauty with potential for tourism. These attributes qualify the area as Category I under the CRZ Notification.

On the one hand the Gujarat Government has recognised the ecological sensitivity of the area, whilst on the other it is proposing and supporting its total devastation.

7. Need for a National Port Policy

Presently 41 ports dot the coastline of Gujarat. Another 10 sites have been earmarked or identified for Port Development, Umbergaon being one such site. Traffic for the Umbergaon Port is to be attracted from nearby ports. This will amount to diversion of traffic, duplication of infrastructure, and an overall waste of national resources. This mushrooming of ports makes it necessary to establish a National Ports Authority and formulate a National Port Policy. This will pre-empt the haphazard and unregulated development of ports along the coastline.

8. Looting People in the name of Development

The Gujarat Government has directly participated in handing over an entry point into the country to foreign interests with a deplorable track record. The Government is openly siding with the company inasmuch as the intention to acquire notices have been issued without the project having received the necessary statutory clearances. Essential studies such as the Environmental Impact Assessment have not been completed. It is necessary to question how the government can initiate a project of this magnitude without having a definite idea of its impact on the social and ecological fabric of the region.

The Tribunal feels that this could be yet another instance where large tracts of land will be acquired and thousands of persons will be displaced and/or will lose their means of livelihood for an unviable and unnecessary project. The Gujarat Government should come before the people and convince them of the need and justification for the project.

- 1) To enable the locals to make informed representation, it is imperative that the GMB, the companies and other concerned authorities provide them with the Project Report, Feasibility Studies, EIA Report and other relevant documents.
- 2) The Gujarat Government must conduct a public hearing at the proposed port site, after giving the locals the relevant documents and considering their objections and suggestions.
- 3) The proposal for construction of the port along with other documents must be sent to MOEF, New Delhi for obtaining the mandatory permissions. No port-related activity should be carried out by the company or by GMB until such permission is obtained.
- 4) No land acquisition notices should be issued to the locals until the proposed site has been chosen, the relevant documents disclosed, the public hearing conducted, and the mandatory permissions and clearances obtained. The intention to acquire notices already issued by GMB are premature and cannot be treated as an official notice under the Land Acquisition Act, 1894.
- 5) Prior to the commencement of any project, the concerned authorities must place the same before the people and it is only in consultation with the concerned Gram Panchayats and Gram Sabhas should any decision with regards to a development project in any particular area be taken. It is essential to note that in the present case, the concerned Gram Panchayat and the Taluka Panchayat have passed resolutions to oppose the project.
- 6) The Tribunal recommends that if the GMB and the NATELCO-UNOCAL consortium are unable to convince the locals of the benefits of the project, the proposed project should be scrapped.
- 7) The Tribunal recommends that a National Port Authority be constituted and an enforceable National Port Policy be framed to prevent the development of ports in a haphazard and unregulated manner.
- 8) The EIA Report should not only study the environmental impact of the project, but should also look into the joint effects of the installation of new infrastructure and related facilities of the port complex. It is necessary to conduct a combined impact assessment.
- 9) The Tribunal recommends that the Government should closely scrutinise the credentials of project developers, especially the foreign collaborators, before awarding contracts. We strongly advise the Government of Gujarat to take cognisance of the history and track record of the UNOCAL Corporation in its previous development projects.

RECOMMENDATIONS

The Commission has been asked to consider the proposed amendments to the Bill. It has taken into account the views of the public and the Government. The Commission has concluded that the proposed amendments are necessary and should be accepted.

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THE INDIAN PEOPLE'S TRIBUNAL ON ENVIRONMENT AND HUMAN RIGHTS

In June 1993 at the National Conference on 'Human Rights, Environment and the Law', 400 people comprising lawyers, judges, human rights activists and non-governmental organisations (NGOs) met to share their experiences. Disillusioned with the apathy of the judiciary towards human rights and the environment they decided to campaign for changes in the system. The conference culminated with the setting up of the **Indian People's Tribunal on Environment and Human Rights (IPT)** on June 5, 1993. The IPT is positioned as an alternative 'People's Court'.

Retired Supreme Court and High Court judges associated with IPT investigate crucial human rights violations and cases of environmental degradation. These reports are then used by local groups to further their campaign and strengthen their struggle. In some cases, public interest litigation is filed on the basis of these reports to obtain relief for the victims.

Objectives

To bring environment and human rights issues centre-stage and provide an alternative vision for both, the judiciary and the public.

To investigate cases of gross human rights violations and environmental degradation and to report, campaign and litigate.

To highlight the plight of the oppressed, in particular children, women, tribal people, slum dwellers, labourers and prisoners, and encourage victim communities to fight for their rights.

Other Investigations Undertaken by the IPT

- ≈ Forced Evictions - Due to Mega Projects, Urbanisation and Natural Disasters
- ≈ People's Rights in Protected Areas
- ≈ Atrocities Against Women
- ≈ Attacks on Minorities
- ≈ Impact of Industrialisation
- ≈ Bonded Labour
- ≈ Police Atrocities